

SUPPLEMENTAL
EXECUTIVE OFFICER SUMMARY REPORT
May 14, 2003

ITEM: 11

SUBJECT: PUBLIC HEARING: A public hearing may be held regarding the issuance of Cleanup and Abatement Order No. R9-2003-0158 to Pioneer Builders Inc. for alleged violations of the California Water Code at a residential development construction site. (Tentative Tract Map No. 16197) located on Camino Capistrano in the City of Dana Point (Jeremy Haas)

SUPPLEMENTAL
DISCUSSION:

The following information supplements the Executive Officer Summary Report prepared on May 1, 2003 to update the Board of recent events and to include additional supporting documents for consideration of the issues pertaining to Agenda Item 11.

An application for Section 401 water quality certification was submitted by Pioneer Builders on April 18, 2003. The proposed on-site mitigation was for 0.04 acres of wetland, smaller than the 0.06 acres required by CAO R9-2003-158. On April 30 Pioneer Builders met with the Regional Board and California Department of Fish and Game and proposed a revised on-site plan for creation of 0.06 acres of wetlands. Details of the revised restoration plan were not provided at the meeting. The CAO requires that a detailed restoration plan be submitted by May 12, 2003.

Attached as supporting document no. 4 is a request from Pioneer Builders to the Executive Officer to modify the CAO to allow the creation of wetlands in a different configuration than existed previously.

Also attached as supporting document no. 5 is a second submittal from the Dana Point Wetlands Protection Association expressing their concerns that the size of the filled wetland was larger than what the U.S. Army Corps of Engineers (USACE) had determined and, consequently, larger than what the CAO requires to be replaced.

Recently the USACE indicated that they may not accept the on-site wetland creation concept as proposed by Pioneer Builders for mitigation purposes because of concerns with the source of water and, instead, may require all mitigation per Clean Water Act Section 404 to be conducted off-site.

Also enclosed is a response from the City of Dana Point to the Regional Board's request for a Technical Report per CWC §13225 and §13267 regarding the City's environmental review process for this project.

At issue is whether the Board will accept the developer's modified proposal for on-site restoration or to require removal of fill and restoration of the on-site wetlands in the pre-existing location as required by the CAO.

Assessment of the latest proposal should be completed prior to today's meeting.

LEGAL CONCERNS: None

SUPPORTING
DOCUMENTS:

1. Cleanup and Abatement Order R9-2003-158
(Provided in first mailing)
2. Technical Report
(Provided in first mailing)
3. Letter to the Regional Board submitted by the Dana Point Wetlands Protection Association
(Provided in first mailing)
4. Request from Pioneer Builders to modify CAO R9-2003-158
5. Second letter and material submitted by the Dana Point Wetlands Protection Association to the Regional Board
6. Response from the City of Dana Point to Regional Board request for Technical Report

RECOMMENDATION: A recommendation will be provided following discussion of this item.